

REMARKS/ARGUMENTS

Prior to the entry of this Amendment, claims 1-4, 6, 7 and 9-20 were pending in this application. Claim 2 has been amended, new claim 21 has been added, and no claims have been canceled herein. Therefore, claims 1-4, 6, 7 and 9-21 are now pending in this application. Applicants respectfully request reconsideration of these claims, as amended, for at least the reasons presented below.

35 U.S.C. § 112 Rejections

The Office Action has rejected claim 2 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Amendments have been made herein that are thought to overcome the reasons for the rejection. Therefore, the Applicants respectfully request withdrawal of the rejection.

35 U.S.C. § 101 Rejection, Non-statutory matter

The Office Action has rejected claims 1-9 under 35 U.S.C. §101 as being allegedly directed to non-statutory subject matter. Specifically, the Office Action argues that claims 1-9 “do not indicate use of hardware on which the software runs to perform the steps recited in the body of the claim, and thus being [sic] directed towards being nonfunctional descriptive material.” As an initial matter, the Applicants respectfully point out that claims 1-9 are directed to “a system” and therefore do in fact recite hardware. The Applicants respectfully traverse the characterization of the claims as being directed to nonfunctional descriptive material for at least the following reasons as well.

In defining nonfunctional descriptive matter, the MPEP states that “certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or

compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter.” (MPEP §2106.01) The Applicants respectfully argue that the system of claim 1 does not recite a mere arrangement or compilation of facts or data without functional interrelationship. Rather, claim 1 recites an abstraction engine operable to receive a content object and to form the content object into an abstract form and a distinction engine operable to conform the abstracted content object with a standard. MPEP §2106.01 gives an example of:

“a computer that recognizes a particular grouping or sequence of musical notes read from memory and thereafter causes another defined series of notes to be played, requires a functional interrelationship among that data and the computing processes performed when utilizing that data. As such, a claim to that computer is statutory subject matter because it implements a statutory process.”

The Applicants respectfully argue that, like the computer of this example, the system and functional components recited by claim 1 are in fact directed to statutory subject matter since they do provide a functional interrelationship between the data (i.e., the content object, the abstracted content object, etc.) and the computing processes performed when utilizing that data (i.e., abstraction and distinction).

The Office Action goes on to state that “software or program can be stored on a medium, and/or executed by a computer. In other words the software must be computer-readable.” (emphasis original) The Applicants do not disagree with the statement that software or programs can be stored on a medium, and/or executed by a computer. However, how exactly this leads to the conclusion that “software must be computer-readable” is not clear. The Office Action then goes on to argue that the abstraction and distinction engines recited in claim 1 “are construed to being [sic] software *per se*” and, while not explicitly stating a conclusion, seems to imply that such software is not patentable subject matter under 35 U.S.C. §101.

Further confounding the matter is the fact that, other than the initial quotation of 35 U.S.C. §101, no supporting statute, rule, or other relevant authority is cited as supporting the

rational of the rejection. On its face, this statement seems to suggest that, to the contrary a myriad of established law, software cannot be patentable subject matter unless it is embodied on a computer-readable medium. However, no citation of relevant authority or other support is given in the Office Action for such a requirement. The Applicants respectfully submit it is clear that a process, even if not embodied on a computer-readable medium or in a system as recited by claims 1-9, can be patentable subject matter. See for example 35 U.S.C. §101, Diamond v. Chakrabarty, 447 U.S. 303, 308-09, 206 USPQ 193, 197 (1980), Alappat, 33 F.3d at 1542, 31 USPQ2d at 1556, MPEP §2106, and the *Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility* pages 11-14. Thus, the applicants respectfully request clarification of the statements quoted above and/or withdrawal of the rejection.

35 U.S.C. § 102 Rejection, Elwahab

The Office Action has rejected claims 1-10, 17 and 18 under 35 U.S.C. §102(b) as being anticipated by U. S. Publication No. 2001/0034754 A1 of Elwahab et al. (hereinafter "Elwahab"). The Applicant respectfully submits the following arguments pointing out significant differences between claims 1-10, 17 and 18 submitted by the Applicants and Elwahab.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants respectfully argue that Elwahab fails to disclose each and every claimed element. For example, Elwahab fails to disclose, either expressly or inherently, abstraction or distinction of content objects as recited in the pending claims. Elwahab also fails to disclose, expressly or inherently, grouping sources of content objects as recited in the pending claims.

Elwahab is directed to "a Markup-Language-type content server used in conjunction with a customer premise gateway that allows, via Markup-Language-type pages

(e.g., HTML, XML, and the like), remote access and control of smart devices, appliances, personal computers, and other devices and systems connected at a customer premise via different communication means and protocols." (para 1) That is, Elwahab discloses a system for allowing a user to remotely control appliances within his home, e.g., HVAC, lighting, security system. (para. 9) However, Elwahab does not disclose, expressly or inherently, abstraction or distinction of content objects as recited in the pending claims. Elwahab also fails to disclose, expressly or inherently, grouping sources of content objects as recited in the pending claims.

As defined for example on page 5, paragraph 20 of the detailed description of the pending application, a content object is defined as "content maintained as an accessible object that can be accessed, utilized, and/or stored." Furthermore, examples of such content "include, but [are] not limited to, traditional content including movies, music, games, voicemails, emails, software, security video, emergency alerts, and any other content that comes to the home or can be requested from the network via providers." (para. 24) Elwahab does not disclose abstraction or distinction of such content. For example, Elwahab does not disclose abstraction or distinction of video objects, audio objects, etc. or grouping sources of such objects into sources and destinations. Rather, Elwahab describes a system for allowing a user to remotely control appliances within his home, e.g., HVAC, lighting, security system.

Claim 1, upon which claims 2-9 depend, recites in part "an abstraction engine communicably coupled to a first plurality of content object entities within a customer's premises, the abstraction engine operable to receive a content object from one of the first plurality of content object entities and to form the content object into an abstract form; a distinction engine communicably coupled to a second plurality of content object entities within the customer's premises, the distinction engine operable to conform the abstracted content object with a standard compatible with a selected one of the second plurality of content objects." Elwahab does not disclose abstraction or distinction of content objects. Rather, Elwahab describes a system for allowing a user to remotely control appliances within his home, e.g., HVAC, lighting,

security system. For at least these reasons, the rejection is improper and claims 1-9 should be allowed.

Claim 10, upon which claim 17 depends, recites in part "accessing a first content object from a first content object entity within a customer's premises, wherein the first content object is in a first content format; abstracting the first content object to create a second content object in an abstract format, wherein the abstract format is compatible with a plurality of content formats; distinguishing the second content object to create a third content object, wherein the third content object is in a second content format that is compatible with a second content object entity within the customer's premises." Elwahab does not disclose abstraction or distinction of content objects. Rather, Elwahab describes a system for allowing a user to remotely control appliances within his home, e.g., HVAC, lighting, security system. For at least these reasons, the rejection is improper and claims 10 and 17 should be allowed.

Claim 18 recites in part "identifying content object entities within the customer premises; grouping the identified content object entities into a first plurality of content object entities and a second plurality of content object entities, wherein the first plurality of content object entities are sources of content objects, and wherein the second plurality of content object entities are destinations of content objects." Elwahab also fails to disclose, expressly or inherently, grouping sources of content objects. Rather, Elwahab describes a system for allowing a user to remotely control appliances within his home, e.g., HVAC, lighting, security system. For at least these reasons, the rejection is improper and claim 18 should be allowed.

35 U.S.C. § 103 Rejections, Elwahab in view of Jeffrey

The Office Action has rejected claims 11-14, 16, 19 and 20 under 35 U.S.C. §103(a) as being unpatentable over Elwahab as applied to claims 1-10 and 17-19 above, in view of U.S. Patent No. 6,576,981 of Ross A. Jeffrey (hereinafter "Jeffrey"). As discussed above, claim 10, upon which claims 11-14 and 16 depend, and claim 18, upon which claims 19

and 20 depend, are thought to be allowable. Therefore, claims 11-14, 16, 19 and 20 are also thought to be allowable at least by virtue of their dependence on an allowable base claim.

35 U.S.C. § 103 Rejections, Elwahab in view of Jeffrey

The Office Action has rejected claim 15 under 35 U.S.C. §103(a) as being unpatentable over Elwahab and Jeffrey, in view of U.S. Patent No. 6,611,840 of Baer et al (hereinafter "Baer"). As discussed above, claim 10, upon which claim 15 depends, is thought to be allowable. Therefore, claim 15 is also thought to be allowable at least by virtue of its dependence on an allowable base claim.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

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Respectfully submitted,



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